

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
- MINUTES -
MONDAY, FEBRUARY 26, 2007
TRURO TOWN HALL, 7 PM**

QUORUM PRESENT: N. Pope (Chmn.); K. Althaus (Clerk); A. Hultin (Acting Vice Chmn); M. Matricardi; J. Allee, Alt.; A. Efromson, Alt.). (Absent: J. Conlon (Vice Chmn.) S. Kelly, Recording Sec.

Regular Meeting called to order at 7 P.M. by Chairman Pope, who entered into the record the fact that for the applicable hearings scheduled for this meeting, the list of abutters to be notified had been verified by the Assessors, and all the abutters listed were duly notified in writing. In addition, the meeting was duly advertised in "The Cape Codder" for two weeks preceding the public hearing. It is noted by the Board written reports, where applicable, of the Building Commissioner are entered into the minutes by reference.

Other Business:

- Minutes of January 22, 2007 were approved as written on a Motion by Mr. Efromson, 2nd by Ms. Matricardi (6/0), unanimous.
- Mr. Efromson mentioned his meeting with the Planning Board regarding the zoning bylaw 30 ft. separation requirement between cottages/structures on the same property, which is relevant to everywhere in Truro. He suggested Planning Board members could write a letter to the Building Inspector for possible discussion at the next Planning Board work session. Members concurred there was ambiguity in the interpretation of the definition and agreed they would write a letter to the Building Inspector as well. Mr. Efromson would bring a draft for the March packet.

7:15 P.M. – Town of Truro, Building Committee, by agts/mbrs Tim Dickey and Deborah Paine, for property located at 7 Standish Way, (Atlas Sheet 36, Parcels 75)(2007-002/ZBA). Applicant is seeking a Special Permit pursuant to Sec. 50.1A. (Area & Height Regulation) Sec. 50.1 B of the Truro Zoning Bylaw for construction of the Truro Community Center Building with a building height as proposed of 38.5' (a mean grade level approx. 50.5', top of roof ridge approx. 89'), with reference to Ammondson Architects, drawings C-1 & A-3.0 dated 11/13/06, and as filed with the Building Commissioner and ZBA. Mr. Dickey was present to explain the petition. He said he was speaking as Vice-Chairman of the Truro Building Committee and said in many towns height restrictions usually refer to residential property and municipal structures are often exempt from the height. He mentioned the pitch of the roof and proposed dimensions of the structure; he said the pitch of the roof is in proportion to the length and width of the building. He mentioned heights of other municipal buildings such as the library, school and police facility; he added there will be a bit of fill used to establish grade, and in relation to the height of the library at a certain point, the community center building will be approximately 8 ft. higher in relation to that of the library.

Mr. Efromson voiced concerns about the height, and Ms. Dunigan, a member of the TBC, explained they had eliminated the basement to reduce costs and the height was needed for air-handling units, etc. Mr. Pope asked for further comments from the TBC. Ms. Nagy, Chairman of the Building Committee, said one of the reasons for the height was the multi-purpose room would be used for minor sports, theatrical productions, etc., and functions for the entire community which would therefore require a higher ceiling. TBC member Thornley mentioned the building would be on a very large lot and is in a scale with the library; the size is appropriate to the site. It was noted the initial designs were significantly higher and the Building Committee had made a concerted effort to make the elevation as low as possible.

Assistant Town Admin./Planner Greenhalgh mentioned they were asking for a Special Permit not a Variance and no hardship proof is needed; traditionally, she added, community buildings are usually much larger and this structure will serve multi-purposes, and they were only dealing with height not use. Mr. Pope read a letter from abutter Boespflug citing concerns with the development of the property. In response to a question about Site Plan Review, it was explained there is no site plan review because it is a municipal building. Mr. Pope asked about the water source; it would be a town water hookup. Other ZBA members spoke: Mr. Althaus spoke about the 30 ft. height limit in Truro and said this was one of the more sacrosanct sections of the bylaw. He continued, while he had voted against the height of the police facility in 1992 because he did not think an adequate argument for the height was made at that

time, he felt this proposal is pretty much hidden from the road, and the impact will not be as great at this site, and he understood the justification for the added space in the height. Mr. Pope said the original intent of the bylaw was to have an exception for municipal uses, even if this was not spelled out. Ms. Matricardi asked about the space for the "mechanicals" and Ms. Dunigan explained they would have to redesign the building and this would hinder the intended use of the room. Ms. Nagy said they had designed a multi-purpose room and had compromised by going with the least-possible height and size to meet the needs of the community. After further discussion, the following Motion was made:

Motion (Hultin; 2nd Althaus): Move to approve a Special Permit pursuant to Sec. 50.1A. (Area & Height Regulation) Sec. 50.1 B of the Truro Zoning Bylaw for construction of the Truro Community Center Building with a building height as proposed of 38.5' above mean grade, with reference to Ammondson Architects, drawings C-1 & A-3.0 dated 11/13/06, as filed with the Building Commissioner and ZBA. The Board Finds said Permit is in keeping with the spirit of the bylaw and not substantially more detrimental to the neighborhood.

Voted in Favor: Pope, Althaus, Hultin, Matricardi, Allee. Voted Against: None. Motion Carries 5/Yes; 0/No, Unanimous.

7:30 P.M. – Zitzkat Nom. Trst/L. Larue et al, Trustees, by agt/atty Revere for property located at 574 Shore Road, (Atlas Sheet 5, Parcel 27)(2007-001/ZBA). Applicants are seeking a Special Permit and/or a Variance pursuant to Sec. 30.7 (Nonconforming uses) of the Truro Zoning Bylaw in order to relocate a house, w/reference to Site & Sewage Plan filed dated 2/15/01, with a latest revision of 8/10/05 by Felco, Inc.

Atty. Revere was present as representative for the applicants. He said he had received the Memorandum from Ms. Greenhalgh regarding the additional information requested and whether the Hearing should be continued because the information had been received as such a late date. Members discussed asking for a continuation or proceeding. Atty. Revere mentioned the material was late because he had been involved with a trial date. Since abutter Murray had driven 300 miles, Mr. Efromson asked if abutters would have a chance to speak. Mr. Pope said if the applicant does not provide enough information, traditionally the ZBA requests a continuation. Mr. Revere contended the application was complete without the additional information; he felt it was best to open the hearing in order for those present to make comments. All agreed to proceed at this point.

Atty. Revere explained the house would be moved more toward the bay, put on a pile foundation and a deck would be added; he said there was a long history on the property and this was an attempt to resolve some of the zoning issues. He provided further background: the lot is served by the public water supply; there were 4 non-conformities – lot size, frontage, frontyard setback (encroachment) and sideyard non-conformity. He said the first two non-conformities could not be resolved. Mr. Pope said they needed some history to see if the plan provided was different from the 2003 plan. It was noted the setback between buildings was an issue in 2003, and moving the building seaward would alleviate the setback issues. Atty. Revere mentioned past issues such as ConsCom and DEP disapprovals and said under the Wetlands Protection Act, they could not proceed unless they follow the procedure of applying to the ZBA. He said he felt moving the structure reduces the non-conformity and thus is less detrimental.

Mr. Hultin said his recollection was there had been little chance the applicant could proceed to the "bulkhead line," and he asked whether he would indeed go into that bulkhead line? Mr. Revere responded they were addressing primarily a zoning issue rather than a conservation issue. In response to a question from Mr. Hultin regarding the plan, Atty. Revere said it was the exactly the same plan as was submitted to DEP. Mr. Hultin continued it was his understanding in the past, the ZBA would not necessarily wait for ConsCom approval to act on a petition; they had conditioned grants in the past relevant to ConsCom, etc., approval and it was not the ZBA's policy to wait for action from other boards/committees, [given the legal time constraints, etc.]. Ms. Matricardi asked about moving the septic system; Mr. Revere said if they move the house toward the water, the reserve and tank would move seaward as well. In response to a question from Ms. Matricardi regarding placement of the house over the leach field, Mr. Revere if that were done, it would seem to be encroaching on Ms. Serena's property.

Mr. Hultin said they had to come to a decision on what the application is seeking. Mr. Althaus mentioned the 81L issue and asked if that designation complicated the issue. Members discussed 81L and the Subdivision Control Law, and Mr. Pope noted past information from Town Counsel spoke of the need for a Variance to expand an 81L subdivision, and added, there was very limited court information on this topic. Mr. Revere said they were not expanding; they were simply altering. Mr. Efromson asked whether the appeal to DEP had been lost; Mr. Revere concurred it had. Mr. Efromson said the application was for a Special Permit and/or Variance and asked if about the Variance aspect; he also asked if the two lots had been held under separate ownership since 1998; response was, they had. Mr. Efromson asked if Mr. Zitzkat had been aware of the easement; Mr. Revere said he may not have been aware of the zoning requirements, and mentioned the bylaw reference to sideyard setback. Mention was made of lot combinations and zoning. Abutter Murray then read his letter in regard to the petition as did Ms. Serena; neither was in favor of the request. Ms. Serena also provided previous DEP and petition material regarding the property for the files. Both abutters felt moving the house would impact their properties and mention was also made of the ConsCom and DEP denials and Barrier Beach/Coastal Dune issue. Another letter of objection was read from Mr. & Mrs. Sturdy. Atty. Revere summarized: moving the house will resolve the sideline issue thus this would be less detrimental to the neighborhood. He asked for a continuation and a Motion was made by Mr. Pope, 2nd by Mr. Efromson to continue the Hearing until March 26, 2007 at 7:15 P.M., 5/0 Unanimous to continue.

At this point Mr. Pope noted there was a procedural issue regarding the Special Permit granted to Albert Silva at the January 22, 2007 Meeting and mentioned the 25-ft.-setback requirements for that section of North Truro. Ms. Greenhalgh explained clarification was needed for the upcoming Planning Board Site Plan Review. Mr. Pope said he would write a letter to the Building Commissioner verifying the ZBA voted unanimously to approve the plan and asked for a Motion in this regard. Mr. Efromson moved to approve writing the letter to the Building Commissioner; 2nd provided by Ms. Matricardi, 5/0 Unanimous.

Next ZBA Meeting March 26, 2007 at 7 PM, with Petitions heard starting at 7:15 PM.

Meeting adjourned at 9:30 PM.